

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No.886 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

PETER I FERNANDEZ  
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Appearance:

MS HANSA PUNANI for Petitioners  
MS SEJAL MANDAVIA for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/03/2000

C A V JUDGEMENT

#. Arguments in this case were heard on 3/2/2000 and the order was kept C.A.V. On the request of the counsel for the respondent who desirous of seeking instructions from

her client the judgment was not dictated till 17/2/2000. Though this period has already gone but the counsel for the respondent had not made any statement. The dictation of judgment is given on 18/2/2000. It is a case where though the respondent would not have been entitled for and could not have been given the appointment on compassionate ground but the civil court had decreed the suit which judgment has been affirmed in the First Appeal. Second Appeal filed in this court has also been dismissed. Further that matter was carried to the Hon'ble Supreme Court and S.L.P. was dismissed on 7/8/95. From the order of the Hon'ble Supreme Court I probably the court was not satisfied on the merits of the claim of the petitioner but the appointment was taken to be under the executive power of the State, it was not considered to be a fit case for interference and the S.L.P. was dismissed. The suit was decreed on 5/2/91. The respondent filed application for execution of the decree and the executing court has given direction to the department to pay to the respondent the salaries and allowances admissible to the post which he holds from 5/5/91 onwards and also directed the petitioner to submit the statement accordingly of the pay fixation and arrears calculated thereon and further directed to pay the said amount to the respondent on or before 15/6/96. This order is challenged in this revision application by the petitioner.

#. Learned counsel for the petitioner contended that the learned executing court has exceeded its jurisdiction in passing of the impugned order. It has next been contended that the executing court cannot go behind the decree of the trial court. It is submitted that the impugned order passed by the executing court contrary to the decision of the Hon'ble Supreme Court. The decree of the court below merged into the order of the Hon'ble Supreme Court. The counsel for the respondent on the other hand contended that the trial court has given direction to give the appointment to the respondents within five months from the date of the decree and in case that order was not complied with the respondent should not have been suffered. That judgment was affirmed up to the Hon'ble Supreme Court and as such the respondent is entitled for the benefits of the salary and allowances etc. for the period from the date on which he should have been given appointment till the date of appointment.

#. Having given my thoughtful consideration to the rival contentions of the learned counsel for the parties, it is a clear case where the learned executing court has

exceeded its jurisdiction in passing the impugned order. The court nowhere contemplated and given directions for the payment of the salary and allowances to the respondent. The matter was taken up to the higher courts and it is a case where because of this long period the Hon'ble Supreme Court had not interfered in the matter otherwise the case of the respondent is covered under the government circular. It was taken to be an appointment under the execution power of the State and to that extent it has been clarified. When this was the appointment under the executive powers of the State, I fail to see any justification in the claim of the respondent for the salary and allowances etc. He should have been given appointment and that appointment has been given. If the appointment has been given after the period as fixed by the trial court, in the facts of this case to which no exception could have been made and the learned executing court could not have conferred all those benefits for which the respondent is not otherwise entitled. In case the order of the executing court is allowed to stand it will cause irreparable injury to the petitioner as the petitioner has to be paid salaries and allowances to the respondent for the period for which he has not worked. On principle of no work no pay also this claim of the respondent does not stand to any logic and merits. The learned counsel for the respondent has stated that if the salary and allowances are not given, seniority be given to the petitioner. But I do not find any substance in this contention also. This benefit also cannot be given to the respondent.

In the result the Civil Revision Application succeeds and the same is allowed. Order dated 18/4/1996 of the Civil Judge (S.D.), Junagadh in Execution Petition No.161/91 is quashed and set aside. Rule is made absolute. No order as to costs.

(S.K.Keshote, J.)

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